

# Report on the Use of Force by Seattle Police Officer James Lee

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Date: March 02, 2011

## Introduction

I was asked by Capt. Michael Dahl and Det. Sgt. Mike J. Marken of the WSP to evaluate Officer James Lee's actions as to whether or not his use of force was reasonable and necessary according to Seattle Police Department policy. The request is a bit unusual since I normally analyze an officer's use of force via a constitutional standard. Typically, I am not asked nor do I offer an opinion regarding the officer's compliance with agency policy but rather if the facts and acts are reasonable or within the principles taught to Law Enforcement Officer's. However, Seattle Police Department's policy essentially mirrors Washington State statute and therefore I utilized both Federal and State standards.

## Background Information

My opinions on the physical force applied to Suspect Hoston by Officer James Lee are based on my training in the area of police use of force, experience in teaching physical force concepts and tactics, and the materials listed below. (CV upon request)

## Materials provided

I was given the following materials to review and as a source of facts on which to form my opinions

1. Robbery / assault investigation by Ron Norton
2. Seattle Police Department:
  - Use of Force policy
  - Lesson Plans for Counter Striking Tool, ACT Defensive Tactics, Street Skills.
  - Buy/bust operations order
  - Arrest Report of Mr. Hoston by Officer J. Lee
  - Training record of Officer J, Lee
3. Witness statements
  - Forrest Abdon
  - D. Alemayehu
  - K. Atwater
  - J. Bengston
  - R. Grams
  - D. Hoston
  - Z. Lkjundev
  - V. Peralta

4. Transcripts of interviews with the following officers:

- Sgt. B. Kraus
- Sgt. T. Yoon
- Officers:
  - Cerley
  - Lednicky
  - McAuley
  - Pasquan
  - Peplowski
  - Reyes
  - Vaca
  - Zeiger

5. Video from the following:

- Joe's Market surveillance (2 views provided)
- Noc-Noc club
- Olympic tower
- I-Phone from J Bengtson

6. Timeline of Mr. Hoston's movements throughout Joe's, Noc-Noc, and Olympic Tower.

I was not given Officers Lee use of force statement which is unprecedented in my experience as an expert witness. Officers can only act on their perceptions and cannot reasonably be expected to know the thought process of the violator or their reason for non-compliance. Concomitantly, their perceptions must be reasonable and therefore the lack of the Officer Lee's specific perceptions and explanation of why he took various actions substantially hinders my ability to reach a thorough conclusion regarding reasonable force application. This difficulty in analysis stems primarily from the fact that a proper analysis must consider the officer's perceptions at the time the force was applied.

## Opinion

Using the facts currently available to me and viewed in the light most favorable to Officer Lee, the force used to apprehend Suspect Hoston was reasonable and necessary as well as within the teachings of the Criminal Justice Training Commission except for the 3<sup>rd</sup> and final kick delivered to Suspect Hoston's head.

## Explanation of opinions

I was asked to evaluate the use of force relative to the Seattle Police Department policy which uses "reasonable" as a metric. The totality of the environmental circumstances affects the reasonableness of the force used in a given situation. Many considerations must factor into an officer's decision to employ physical force options. Use of force will at least be based on the officer's training, experience and (especially) perception of the resistance exhibited by the violator. Under *Graham V Connor* the courts have recognized that the use-of-force by police is considered a 4th amendment issue. Additionally, that officers must make decisions about their use of force in tense, uncertain and rapidly evolving situations. It is unequivocal that Officer Lee was in fact involved in a tense and rapidly evolving situation.

Additionally the policy cites the RCW 9A16.040 regarding when force is lawful and notes an additional metric (beyond constitutional requirements) of "necessary" which is defined by State statute as: no reasonably effective alternative to the use of force appeared to exist, and the amount of force used was reasonable to effect the lawful purpose intended. Ultimately this definition merely restates the Constitutional standard of reasonable force (although the adjective of "objectively" is not included as is noted in *Graham*) and that anything less would not have been reasonable [to employ at the time of the use of force]. Therefore my analysis will focus on the reasonableness of Officer Lee's actions.

Officer Lee witnessed Suspect Hoston participate in an assault and attempted robbery of a plain-clothes Seattle Police Department officer moments before his contact and subsequent arrest in Joe's Mart. Based on that observation Lee had the reasonable belief that Suspect Hoston posed a dangerous threat. Additionally Officer Lee could have reasonably expected that Suspect Hoston could be armed and the use of a gun for coercive force as well as a quick and decisive takedown and arrest was needed.

The kick delivered to the lower body area followed by a "neck hook" takedown were within departmental and academy training parameters both from a technical and situational perspective. (In fact I gave input on the development of these tactics at the inception of the ACT).

It appears from the video that Lee issues verbal commands to Suspect Hoston. However I am not able to ascertain from the video (neither do I know if Officer Lee perceived) that Suspect Hoston was not following his (Officer Lee's) commands (presumed to be for him to place his hands behind his back). Suspect Hoston did not appear to be moving his hands in a threatening manner at the time of the last kick. If I presume that Lee's orders were given and also not followed, I would still conclude that a kick to the head to increase control and gain compliance was both unnecessary and bad technique.

Despite the fact that officers are taught to be wary of suspects' body movements hand placement and positioning (the suspect can retrieve and fire a gun quickly from a prone position). The head kick was poor technique because the motion did nothing to further physical control i.e. control Suspect Hoston's body or limb movement.

Law enforcement officers are trained to respond to each situation based upon their perception of the totality of the facts and circumstances confronting them at the time that they take action. While a kick to the head of a suspect could be reasonable under certain circumstances (i.e. reasonable perceptions were made by the officer involving a violent felon) this situation does not appear to be one of those times. It appears that Suspect Hoston's hands were visible the entire time of the contact with Officer Lee (recall I do not have statements and a UOF report from Officer Lee requiring conclusions from the video and incident reports) which makes the immediate situation less of a threat than outlined above. I will conjecture that the kick was not consistent with verbal

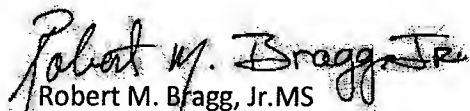
direction (hands behind back) and a kick to the head would likely (and properly be expected to) cause the individual to protect or cover their head (and therefore in direct contradiction to lawful commands).

The Violator resistance continuum taught at the Criminal Justice Training Commission is divided into five categories, Passive, Static, Egressive, Aggressive, and Aggravated Aggressive. It appears on the video that Suspect Houston is not exhibiting anything beyond static resistance. Generally and when practical, the recommended force option is the option that mitigates the injury to the officer and others while safely and reasonably accomplishing the intended lawful action, the final kick does not meet those criteria.

While the Constitutional standard does not require the officer to use the least intrusive amount of force and recognizing that video is not a complete representation of the situation, I believe at this time, that the final kick (to Suspect Houston's head) was unnecessary because:

1. The officer had better tactics available to him the time that were feasible, less likely to cause injury, more likely to accomplish the goal of control, (again I must conjecture that "control" was Lee's intent) easier to perform, and a better strategic choice presenting less tactical risk (as evidenced by Lee falling to the ground after the kick).
2. A "knee pin" or "drop-knee" technique would have better addressed the aforementioned issues and is within the training provided to officers in the Basic Law Enforcement Academy and instructor level courses.

The aforementioned opinions are subject to change as new or additional information is provided to me.



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